



MAR 12 1992

CERTIFIED MAIL

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated under the laws of the state of [REDACTED] on [REDACTED].

The purposes of your organization are to own, maintain, repair and improve the Common Lands and Common Roads including without limitation any improvement now or hereafter existing on such property; to otherwise act in accordance with the Declaration of Covenants, Conditions and Restrictions to promote and insure the present and future residential living conditions relating to the health, safety, public morals, convenience, comfort and beauty of the dwelling units, Common Lands and Common Roads situated in a development known as [REDACTED], [REDACTED], [REDACTED], [REDACTED]; to provide for administration, maintenance and management of recreation areas, lands, trails, signs, buildings and facilities in connection therewith as may come into the control and management of the Association for community purposes, to levy or assess general and special fees and dues for the use of common facilities or other projects of the Association where deemed necessary and proper for its purposes; to provide maintenance for land and to otherwise fully and completely comply with the Covenants, Conditions and Restrictions; to engage in all other activities appropriate for the harmonious development of [REDACTED] and to engage in such other incidental related activities so as to carry out the general purposes; and to provide maintenance for the amenities and recreational areas when dedicated to the Association by the Developer.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Date	2-6-92	2/14/92	2/19/92	3/12/92			

[REDACTED]

The activities of the organization consist of coordinating activities related to the care, upkeep and surveillance of the townhouses and its general and limited common elements and services; the establishment, collection, use and expenditure of assessments; designation, hiring and dismissal of personnel; promulgation and enforcement of rules and regulations; purchase of insurance for the townhouses; and the provisions of lawn cutting, landscaping, snow removal and garbage collection.

Your income is derived from membership dues. Expenses are shown for activities related to your purposes such as lawn cutting, landscaping, snow removal and garbage collection.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1 on page 149 states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by municipal governments, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1 on page 131 modified Revenue Ruling 72-102 by stating guidelines under which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners association must serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental in order to qualify under Code section 501(c)(4).

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term is used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

[REDACTED]

The area served by your activities is a private residential housing development. Such an area does not constitute a "community" within the meaning of 501(c)(4) and the underlying regulations.

Revenue Ruling 74-99 also states that a homeowners association must not conduct activities directed to the exterior maintenance of private residences and that the common areas or facilities must be for the use and enjoyment of the public.

Your Declaration of Covenants, Conditions and Restrictions has procedures for maintaining the ten private residential lots and common areas of your association.


Examples of Common areas are roads, sidewalks, street lights and parklanes. Your Declaration of Covenant, Conditions and Restrictions restricts the use of your common areas to the members who own lots in the development. Any owner may delegate his right of enjoyment to the common area and facilities to the members of his family, his guests, or contract purchasers who reside on the property, and his tenants. Access to, or the use and enjoyment of the common areas is not extended to the general public. Your common areas are for the private use of the members of your organization.

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "... was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklanes, sidewalks and street lights, access to, or the use and enjoyment of which is intended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association...".

Your services do not benefit the community because they are limited to the [REDACTED] lot owners served by your association.

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners associations that serve a private rather than a public interest.

Revenue Ruling 80-63 published in Cumulative Bulletin 1980-1 on page 116 brings out the point that a homeowner's association that does not represent a community cannot restrict the use of its facilities and areas and be tax exempt under 501(c)(4).

  
Based on the information submitted and the applicable law cited above, we conclude that you are primarily organized and or rated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the people of the community. Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

In accordance with this determination, you are required to file Form 1120 for federal income tax purposes.

Your attention is called to Code section 528, which provides certain procedures by which qualifying homeowners associations may elect to be treated as a tax exempt organization. The enclosed Publication 588 describes the requirements for exemption under section 528.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office conference staff. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

Sincerely yours,

  
District Director

Enclosures: Publication 892  
Publication 588